

THE HON'BLE SRI JUSTICE P.S.NARAYANA

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WRIT PETITION No.15493 OF 2007.

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Date: 11.12.2007.

Between:

T.Satyanarayana, S/o.Venkatrayudu and another.
..Petitioners.

AND

Andhra Bank, Zonal Office, Eluru and others.
...Respondents.

THE HON'BLE SRI JUSTICE P.S.NARAYANA

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WRIT PETITION No.15493 OF 2007.

ORDER:

Heard Sri Sai Gangadhar Chamarty, the learned Counsel representing the writ petitioners, Sri M.Satish Reddy and Sri M.Rama Krishna Rao, the Counsel representing respondents.

2. The Writ Petition is filed for a Writ of *Mandamus* declaring the action of respondent No.1 in conducting the auction of all the properties at once at Eluru, which is far away from the properties, as arbitrary, illegal and violative of right of property guaranteed to the Petitioners under Article 300-A of the Constitution of India and consequently direct the respondent to delete the item Nos.2 and 3 of auction notice from the auction by giving opportunity to the petitioners to pay the amount due if any after auction of item No.1 of auction notice dated 10.07.2007 conducted and pass suitable orders.

3. It is averred that respondent No.2, which is carrying on business in the name and style of 'Ramalingeswara Rice Mills', at Unkili village obtained OCC account with 25.00 lakh limit from Aravalli Branch of respondent No.1-Bank by creating equitable mortgage deed in respect of the properties.

"Item No.1

Land and building and hypothecation of plant and Machinery relating to Ramalingeswara Rice Mill situate in area of 0-38 cents at Door No.1-122 in RS.No.153/IC at Unikili worth Rs.35 lakhs.

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Item No.2

Land and building situated in 167 sq.yards (out of which value taken for 151 sq.yards only) in ward No.5 of Damennu Lankalakoderu Road, Tanuku with Door No.12-18 and 12-18 (1) belonging to B.V.Satyanarayana Murthy and B.V.Subba Lakshmi worth of Rs.3.30 lakhs.

Item No.3:

Agricultural Land of 0-73 cents situated in RS.No.153/1A, IB IC at Unikili village belonging to Smt.B.V.Subba Lakshmi worth Rs.2.19 lakhs.

Item No.4:

Vacant site of 3.77.3 sq.yards situated in RS.371/1 near Kondalamma Temple, Ward No.4, Tanuku belonging to Smt.B.V.Subba Lakshmi worth Rs.4.75 lakhs.

4. It is further averred that to avail loan, respondent No.3, who is the owner of Item No.2 to 4 referred above, stood as surety by creating equitable mortgage on the said properties. After availing the loan, respondent No.1 failed to pay the loan and committed default. Thus, respondent No.1 classified the loan account of respondent No.2 as NPA and as on 31-05-2007 the total amount due in respondent No.2 is Rs.25,23,997/-.

5. It is further stated that meanwhile, the petitioners have jointly purchased 78 sq.yards out of total of 151 sq.yards in item No.2 of above referred property for a sale consideration of Rs.3,97,000/- and item No.4 of above referred properties for sale consideration of Rs.5,67,000/- under registered Sale Deed dated 29-06-2007 bearing registered document No.1703 of 2007 from respondent No.3. From the date of purchase the petitioners are

jointly in possession and enjoyment of the item No.2 and item No.4 of above referred properties.

6. It is also averred that while the matter stood thus, as the principal borrower i.e., respondent No.2 and surety i.e., respondent No.3 failed to pay the amount despite of notices under the provisions of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act (hereinafter referred as the Act for short), respondent No.1 got issued impugned auction notice dated 10-07-2007 under the Act proposing to conduct public auction of Item Nos.1, 2 and 4 of the above referred properties for realization of amount of Rs.25,47,985/- and Rs.3,59,053/-. The said notice was published in EENADU West Godavari Edition dated 15-07-2007. Sealed tenders were invited on or before 23-07-2007. In the said notice the properties, which were purchased by the petitioners were also included for realization.

7. Perturbed by the impugned auction notice the petitioners approached respondent No.1 with a request to delete items 2 and 4 (items 2 and 3 in the auction notice) from the proposed auction since the petitioners purchased the property for valuable consideration under registered sale deed without knowledge of the mortgage of said properties by respondent No.3 to the Bank. Respondent No.1 refused to accept the request of the petitioners and proclaimed that since the Bank had mortgage over the properties, it had right to collect the amount under the provisions of the Act.

8. Aggrieved by the said proposed auction of item Nos.2 and 3 in auction notice, the petitioners beg to invoke the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India as there was no other alternative, effective

and efficacious remedy available to them. It is also averred that the petitioners have not filed any Writ Petition nor initiated any proceedings before any authority for the relief as prayed in the above writ petition, which are neither pending nor disposed of.

9. The petitioners further stated that they are bona fide purchasers of item Nos.2 and 3 of the auction notice properties under registered sale deed dated 29-06-2007. The petitioners admit that respondent No.1 had right to realize the amounts by invoking the provisions of the Act. The total amount due, even as per the auction notice, dated 10-07-2007, is Rs.29,07,038/- from respondents 2 and 3. The value of the property of item No.1 was shown as Rs.24,04,000/-, whereas as per the valuation at the time of sanction of loan, it was assessed at Rs.35,00,000/-. Be that as it may, if item No.1 of auction notice put for auction respondent No.1 can get the entire due amount which is Rs.29,07,038/-. There would not be any need for putting the Item Nos.2 and 3 for auction.

10. Further it is averred that the petitioner are willing to pay the rest of amount due, if any, to respondent No.1 after realization of amount from the sale proceeds of auction of Item No.1 of auction notice. Since the petitioners herein are bona fide purchasers of the item No.2 and 3 of auction notice, the provisions of the Act would not apply and no notice was served on the petitioners as the sale is after creating of equitable mortgage by the respondents 2 and 3. The petitioners could not avail the remedies under the Act since no notice under the provisions of said Act were served on them. It is averred that the petitioners' right after the right of respondent No.1-Bank cannot be denied by arbitrary action of auction of their properties. As the petitioners are purchasers of properties, on which respondent No.1 had lien,

they are bound by the rights and obligations of respondent No.1-Bank. The petitioners' request for due diligence in recovery i.e., putting the Item No.1 of auction notice for auction and if any amount is still due from the respondents 2 and 3 herein, the petitioners can be called upon to pay the same to protect their right over the properties of item No.2 and 3 of auction notice. Respondent No.1 proposed to conduct the auction at Eluru, far away from the place where properties are situated, which may cause lesser competition among bidders. If the auction is conducted at the place where the properties are situated, the Bank can secure much value for properties. Thus, the limited grievance of the petitioners is to direct respondent No.1 to conduct auction for item No.1 of auction notice property first and if the Bank failed to secure the total amount due, the petitioners can be given opportunity to pay the same to protect their properties. In such circumstances, the petitioners approached this Court praying for appropriate reliefs.

11. In the counter affidavit filed by respondent No.1, specific stand had been taken that the writ petition is not maintainable. In reply to para No.2 of the affidavit filed by petitioner, respondent No.1 denied that respondent No.2 is carrying on business in the name and style of 'Ramalingeswara Rice Mill' at Unikili village. It is denied that after availing loan respondent No.1 failed to pay the loan and committed default. It is averred that respondent No.2 has availed OCC limit of Rs.25 Lakhs by offering collateral securities of the following properties in favour of the bank:

1) Equitable Mortgage of the land and building and hypothecation of plant and machinery relating to M/s Sri Ramalingeswara Rice Mill situated in area of Ac.0.38 cents, situated at Door No.6-122 in

R.S.No.153/1 and 153/1 at Unikili, which is in the name of B.V.Satyanarayana Murthy herein after called as Item No.1, 2) Equitable Mortgage of the land and building property situated in 167 square yards (out of which value taken for 151 square yards only) in ward No.5 of Dammennu Lankalakoderu Road, Tanuku with Door No.12-18 and 12-18 (1) belonging to B.V.Satyanarayana Murthy and B.V.Subba Lakshmi hereinafter called as Item No.2, 3) Equitable Mortgage of agriculture land with an extent of Ac.0.73 cents, situated in R.S.no.153/1A, 1B, 1C at Unikili village, belonging to Smt.B.V.Subba Lakshmi herein after called as item No.3, 4) Equitable mortgage of vacant site with an extent of 377.3 square yards, situated in R.S.No.371/1 near Kondalama Temple, ward No.4, Tanuku, belonging to Smt.B.V.Subba Lakshmi herein after called as item No.4. It is stated that to avail said loan, B.V.Satyanarayana Murthy the owner of item No.1 and part of item No.2 property stood as co-obligant and also offered security by creating equitable mortgage of the said properties in favour of the respondent No.1 bank. It is also stated that respondent No.3 stood as co-obligant and offered security by creating mortgage of part of item No.2, item No.3 and item No.4, properties in favour of the respondent Bank for availing said loan.

12. It is also stated that item No.2 belonging to B.V.Satyanarayana Murthy and B.V.Subba Lakshmi and item No.4 belonging to Smt.B.V.Subba Lakshmi and B.V.Satyanarayana Murthy had extended the security of item No.1 for availing SSI term loan of Rs.4 lakhs by M/s Sri Ramlingeshwaras Rice Mill, represented by its proprietor B.V.Satyanarayana Murthy which was earlier mortgaged for OCC limit of Rs.25 lakhs to M/s Sri Venkateshwara Traders. Further, it is averred that the loan

account of the respondent No.2 and M/s Sri Ramlingeshwara Rice Mill was classified as NPA due to non-payment of loan amount. Respondent No.2 is liable to pay Rs.25,23,997.92 ps. and M/s Sri Ramalingeshwara Rice Mill is Rs.3,55,487/- as on 31.05.2007 with subsequent interest from 1.6.2007 as per agreement to the Bank.

13. It is averred that respondent No.1 had issued a notice under Section 13 (2) of the Act to respondent No.2, borrower and co-obligants, and M/s Sri Ramalingeshwara Rice Mill represented by its proprietor B.V.Satyanarayana Murthy, borrower and co-obligants, calling upon them to pay the loan amount due and payable to the Bank. The notices were served on them and possession was obtained by the Bank. It is stated that, in response to the securitisation notices, Sri B.V.Satyanarayana Murthy, B.V.Subba Lakshmi and B.Raja Ramesh have addressed letters, dated 20.6.2007, requesting the authorized officer of respondent No.1-bank, to conduct auction of the said properties for the realization of loan amount at the earliest, anticipating theft of machinery and grabbing of the said properties.

14. In reply to para 3 of the affidavit, it is denied that the properties have purchased 78 square yards out of 151 square yards in item No.2 of the said property for a sale consideration of Rs.3,97,000/- and item No.4 property for a sale consideration of Rs.5,67,000/- under registered sale deed, dated 29.06.2007, bearing document No.1703 of 2007 from respondent No.3. It is further denied that from the date of purchase, the petitioners are in joint possession and enjoyment of the item No.2 and item No.4 properties. It is also averred that the said properties are mortgaged in favour of the bank and possession of the said properties were taken over by the respondent-bank much prior to the alleged purchase of the properties by the petitioners. The

petitioners have purchased the alleged property from respondent No.3 having knowledge of issuance of securitisation notices and after taking over the possession of the said properties by the bank, and after addressing the letters by the respondent Nos.2 and 3 and another to conduct auction of the properties. The petitioners in collusion with the respondent No.3 with a mala fide intention to deprive the legitimate right of the respondent-bank to recover the due amount had purchased the said properties.

15. In reply to para 4 of the affidavit, it is stated that it is true that, as the borrowers failed to repay the loan amount, the sale notice was published in Eanadu daily newspaper and Hindu daily newspaper having circulation in West Godavari District by giving wide publicity and calling for sealed tenders for item Nos.1, 2, and 4, properties mortgaged by the borrowers and the co-obligants. Item No.3 was excluded as it was an agricultural land and does not come under purview of the Act.

16. It is further stated that in reply to para No.5, the allegations of the petitioners that the petitioners approached respondent No.1 with a request to delete items 2 & 4 from the auction notice since the petitioners purchased the property for valuable consideration under registered sale deed without knowledge of mortgage of the said properties by respondent No.3 to the bank is false and fabricated and the same is created for filing the above writ petition. It is stated that the alleged purchase of property from respondent No.3 is with a mala fide intention. It is further stated that the said properties are under the possession of the bank, as such, the petitioners are not having any right to stop the auction of the properties for the recovery of the said loan amount. It is also stated that the bank had called for the auction of the said properties, but item No.2 and item No.3-properties were

sold in the auction under the Act, and item No.1 could not be sold due to lack of bidders. It is also stated that item No.1 property was again put for auction calling for sealed tender to be opened on 17.10.2007 with reduced reserve price of Rs.21,60,000/-. It is averred that deleting of item No.2 and item No.4 properties does not arise as the said property is mortgaged in favour of the bank and it is having the first charge over the said properties.

17. Further it is averred in reply to para 6 of the affidavit that the petitioners are not entitled for any relief as the petitioners approached this Court without exhausting their right in the appropriate Court of law. It is stated that the Debts Recovery Tribunal is the competent authority and having the jurisdiction to entertain an appeal against the proceedings under the Act.

18. It is further stated that the petitioners are not the bona fide purchasers of the said properties as the said properties are under the possession of the respondent-bank. It is also stated that the respondent-bank had called for the auction of the said properties as per law by invoking the provisions of the Act, by giving wide publicity. It is stated that Sri S.Manikyam and Sri Dasari Veera Venkata Satyanarayana had stood as successful bidders for item No.2 and item No.3, for an amount of Rs.9,60,000/- and Rs.5,55,000/- respectively. The said auction was not confirmed as per the directions of the Court. Item No.1 property could not be sold due to lack of bidders. It is stated that though the reserved price of item No.1 is fixed as Rs.24,00,000/- as per the present market value, no prospective bidders have participated in the auction, as such the said property could not be auctioned. Under such circumstances, the respondent No.1 cannot be restrained from alienating item No.2 and item No.3 properties to realize the legitimate due amount from the borrowers towards loan account. It is further averred that if the auction of

item No.2 and item No.3 properties were not permitted the respondent bank will suffer irreparable loss damage and prejudice.

19. It is also averred that in reply to para 8 of the affidavit, it is stated that item No.1 property is not sold due to lack of bidders. The petitioners are not bona fide purchasers, as the said property is under the possession of the bank much prior to the alleged purchase of the said properties by the petitioners. The petitioners are not the parties to the loan transaction and the contents of the affidavit filed by the petitioners reveals that the petitioners had purchased the property after the securitisation notices were served on the borrowers and co-obligants to the loan transaction and after the possession of the said properties were taken over by the bank. It is denied that the petitioners are the bona fide purchasers of item Nos.2 and 3 of the auction notice. It is denied that the provisions of the Act would not apply. It is stated that there is no need for service of notice to the petitioners as they are not the parties to the loan transaction and the petitioners had not purchased the said properties with the consent of the bank and the bank is not having the knowledge of purchase of the said properties by the petitioners till the receipt of notice in the above writ petition. It is stated that the petitioners cannot restrain the respondent bank from realization of loan amount from the borrowers by restricting the bank to sell one property or another property more particularly when they had no right over the said properties.

20. It is further averred that the respondent bank had taken all steps to proceed with the sale of item No.1 of the property by giving advertisement in the Telugu and English daily newspapers and also affixed the notices on the said property for sale of the property even then the bidders have not come forward to purchase the property. The allegation of the petitioners that if

the auction conducted at Eluru, far away from the place where properties are situated, which may cause less competition among bidders is false and incorrect. It is stated that the proposed bidders are given opportunity to inspect the auctioned property and more particularly the auction was a sealed tender, which does not cause any inconvenience and lesser competition among the bidders. It is stated that the auction properties are not located at one place as such, conducting of auction at Eluru is proper and correct. It is stated that no prejudice will be caused to the petitioners as the petitioners had purchased the said properties after the securitisation notices were served on the borrowers and co-obligants to the loan transaction more particularly, after the possession of the said properties were taken by the bank prior to the alleged purchase of the property by the petitioners. Under such circumstances, it is just and essential to vacate the interim stay orders dated 20.07.2007 in W.P.No.15493 of 2007 passed by this Court and consequently dismiss the above writ petition with costs to enable the bank to realize the dues from the borrowers.

This is the stand taken in the counter affidavit of respondent No.1

21. W.V.M.P.No.1911 of 2007 is filed by respondent Nos.2 and 3 to vacate the interim order granted in Writ Petition No.15493 of 2007, dated 20.07.2007.

22. This Court ordered notice before admission on 20.07.2007 and granted interim order and on 28.09.2007 *rule nisi* was issued.

23. In the counter affidavit filed by respondent Nos.2 and 3, it is stated that respondent No.2 borrowed an amount of

Rs.25,47,985/- from respondent No.1 for running the rice mill under the name and style as M/s Ramlingeswara Rice Mill and M/s Venkateswara Traders and respondent No.3 stood as guarantor for the said loan and also mortgaged items 1 to 4 mentioned in the writ petition and items 2 to 4 belongs to respondent No.3.

24. It is further averred that as business was in loss, respondent No.2 failed to pay the loan amount due to respondent No.1 in time. Earlier respondent No.1 requested respondent No.2 to pay the loan due to respondent No.1. As respondent No.2 failed to pay the loan amount due to loss in the business, respondent No.1 constrained to issue notice, dated 10.07.2007 calling for the tenders for auctioning items 1, 2 and 4 mentioned in the writ petition and also published the same in Eanadu Telugu daily newspaper on 15.07.2007. As they failed to pay the loan amount due to respondent No.1, orally informed the bank to conduct auction and requested the officials of respondent No.1 to return the amount if any, after receiving the loan amount due to the first respondent bank.

25. It is further averred that the writ petitioners are the customers of respondent No.2-rice mill and respondent No.2 has purchased some paddy bags from the petitioners in the above writ petition and there was due some amount to them and failed to pay the same, and hence, some disputes arose between them. Since then the writ petitioners are trying to occupy the properties belonging to respondents No.2 and 3 by forcibly and on 06.06.2007 the writ petitioners with the help of their henchmen with deadly weapons came to the premises of respondent No.2 rice mill and by threatening proprietor of respondent No.2 and his father saying

that they will kill them if they have not allowed to take the paddy and rice bags kept in the premises of respondent No.2 rice mill and if they revealed the facts happened there to any body, and they forcibly taken away the paddy and rice bags worth of Rs.8,00,000/- and immediately the proprietor of respondent No.2 reported the same to the Attili Police Station, but the writ petitioner managed the police with the help of local politicians and succeeded in their attempt for not to register the case against them.

26. Further it is stated that while the matter stood thus, on 28.06.2007, the writ petitioners again with the help of their henchmen came to the house of respondent No.3 and kidnapped her and also kidnapped her husband and son in a separate place and kept them under their illegal custody for one day and threatened them with dire consequences and the next day i.e. on 29.06.2007 took them in Tata Sumo car at the gate of the office of the Sub-Registrar, Attili and by putting a knife on the neck of her husband, they have taken the thumb impressions and signatures of respondent No.3 with the help of the attender and one another person belongs to the Sub-Registrar Office and registered entire properties belonging to respondent No.3 and in return journey, the writ petitioners along with their henchmen taken respondent No.3 and her husband and son in the same Tata Sumo and obtained 40 signatures of respondent No.3 on the empty pro-notes and also taken the signatures of her husband.

27. It is further averred that the writ petitioners for the purpose of registering the above documents in their favour, managed the Sub-Registrar of Attili as well as the Panchayat Secretary of Unikili obtained a false residence certificate of respondent No.3 saying that respondent No.3 is residing at D.No.6-122, main road, Unikili since 10 years, but as a matter of

fact, respondent No.3 never resided at Unikili and is a permanent resident of D.No.6-3-14, Municipal Office Road, Tanuku, West Godavari District as per the documents like voter card and ration card etc.

28. It is also averred that the proprietor of respondent No.2-rice mill and respondent No.3 complained the same to the Police Station, Attali, but the police were managed by the writ petitioners and local politicians, refused to register the case against the writ petitioners herein. It is also stated that as apprehended from the writ petitioners and their henchmen, respondent No.3 and her husband and son and other family members, left the village. Subsequently, on 22.07.2007 respondent No.3 and her family members came to the village and complained the above said facts to the chairman, A.P.Human Rights Commission, Hyderabad and also reported the same to the higher police authorities.

29. It is also averred that respondents 2 and 3 have no objection for auctioning the items mentioned in the impugned notice dated 10.07.2007. The writ petition is being filed by the writ petitioners only to gain sympathy of this Court and obtained interim stay of auction notice dated 10.07.2007, by suppressing all the real facts. There are no merits in the writ petition and is liable to be dismissed in limine. The writ petitioners are liable for criminal prosecution.

30. In the light of the respective stands taken by the writ petitioners and also respondent Nos.2 and 3, this Court need not go into those factual controversies and liberty is given to respondents 2 and 3 to agitate their rights if they are so advised, in the light of the averments made in their counter affidavit. In the light of the counter affidavit filed by respondent No.1 and in the

facts and circumstances of the case, to proceed with the auction of items 2 and 3 and the auction notice cannot be said to be unjustified. The writ petitioners cannot dictate the banking institution as to how to proceed with the auction. It may be true that when a particular item is more than sufficient to satisfy the debt, the banking institution may not be justified in proceeding with the auction of the other items. But in the light of the stand taken in the counter affidavit filed by respondent No.1, this Court is satisfied that the writ petition is devoid of merit. Further, opportunity is given to the writ petitioners to pursue their remedies in accordance with law if the writ petitioners are so advised.

31. With the above observations, the writ petition is disposed of. No order as to costs.

P.S.NARAYANA, J.

Date:11.12.2007.
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